

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (BROOKLYN)

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:
BARTLETT, et al., : Case No.: 1:19-cv-0007
:
Plaintiff, : Brooklyn, New York
:
v. : September 27, 2023
:
10:07 a.m. - 11:24 p.m.
:
SOCIETE GENERALE de BANQUE :
au LIBAN SAL, et al.; :
Defendants.:
-----:

TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: OSEN LLC
Robert Bartlett BY: Gary M. Osen, Esq.
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Ari Ungar, Esq.
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Appearances (Continued)

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For Defendant: SQUIRE PATTON BOGGS LLP
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For Standard
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1 THE COURT: Good morning. Ms. Chan,
2 could you call the case, please.

3 THE DEPUTY CLERK: This is civil cause
4 for a status conference, Docket 19-cv-0007; Bartlett
5 et al. versus Société Générale de Banque au Liban
6 SAL, et al.

7 Before asking the parties to state their
8 appearance, I would like to note the following:
9 Persons granted remote access to proceedings are
10 reminded of the general prohibition against
11 photographing, recording and rebroadcasting of court
12 proceedings. Violation of these prohibitions may
13 result in sanctions, including removal of
14 court-issued media credentials, restricted entry to
15 future hearings, denial of entry to future hearings,
16 or any other sanctions deemed necessary by the
17 Court.

18 Will the parties please make their
19 appearances for the record, starting with the
20 plaintiff.

21 MR. OSEN: Good morning, Your Honor.
22 This is Gary Osen of Osen LLC, on behalf of the
23 Bartlett plaintiffs.

24 MR. EUBANKS: This is John Eubanks from
25 Motley Rice LLC, on behalf of the Bartlett

1 plaintiffs.

2 THE COURT: Who all do we have here for
3 plaintiff? I -- my understanding is that there were
4 more folks here.

5 MR. RADINE: Yeah. Good morning. This
6 is Michael Radine, Osen LLC, on behalf of
7 plaintiffs.

8 MR. UNGAR: Good morning, Your Honor.
9 This is Ari Ungar on behalf of the Bartlett
10 plaintiffs.

11 THE COURT: Is there anybody else there,
12 Mr. Osen?

13 MR. OSEN: Yes, Your Honor. I believe
14 Tab Turner and Dina Gielchinsky are also on on
15 behalf of the plaintiffs.

16 THE COURT: Okay. Anybody else on behalf
17 of plaintiff?

18 Okay. So on behalf of Société Générale?

19 MR. LESKE: Brian Leske with the Ashcroft
20 Law Firm is here on behalf of SGBL.

21 THE COURT: Okay. And Fransabank?

22 MR. MCGINLEY: Good morning. This is
23 Michael McGinley of Dechert LLP, on behalf of
24 Fransabank. I'm also here on behalf of BLOM Bank.

25 THE COURT: Okay. Anybody with you, sir?

1 MR. MCGINLEY: I believe my colleague
2 Tamer Mallat is on, but I'll pause for a second.

3 THE COURT: Anybody else on behalf of
4 Fransabank and BLOM Bank?

5 Okay. On behalf of -- if you're -- if
6 you just answered the question, Mr. McGinley, you
7 might have been muted.

8 So far, one party, one attorney has
9 entered their appearance for Fransabank and
10 BLOM Bank, Michael McGinley; is that's correct?

11 MR. MCGINLEY: That's correct. I was
12 asking -- I believe that my colleague, Tamer Mallat,
13 who's not in the office with me, but is in a
14 different office -- I believe he joined the call, so
15 I was just prompting him to state his appearance if
16 he is, in fact, on the line.

17 THE COURT: Mr. Mallat?

18 MR. MALLAT: I am on the line. This is
19 Tamer Mallat of Dechert, joining from New York.

20 THE COURT: All right. If you want us to
21 have an accurate record of who's on the call, you do
22 need to speak and say your name when I call your
23 party, okay, everyone?

24 All right. Middle East Africa Bank,
25 Defendant Lebanon and Gulf Bank and Fenicia Bank?

1 MR. BERGER: Yes. Good morning. This is
2 Mitchell Berger from Squire Patton Boggs. And for
3 those three defendants, I'm joined by my colleagues,
4 Gassan Baloul and Joseph Alonzo.

5 THE COURT: Okay. Good morning to you,
6 all.

7 How about Byblos Bank, Bank of Beirut and
8 Bank of Beirut and the Arab Countries?

9 MS. COLLINS: Hi. You have Erin Collins
10 from DLA Piper on the line on behalf of those banks.

11 THE COURT: Okay. Anybody else with you,
12 Ms. Collins?

13 Somebody just dialed in, potentially.

14 Somebody else -- anybody else on behalf
15 of Byblos, Bank of Beirut and Bank of Beirut and the
16 Arab Countries, other than Ms. Collins?

17 All right. On behalf of defendant, Bank
18 Audi?

19 MR. LAKATOS: Good morning. This is Alex
20 Lakatos with Mayer Brown on behalf of Bank Audi. I
21 do not have anyone else with me.

22 THE COURT: Thank you.

23 Defendant, Banque Libano-Francaise; who's
24 here for that bank?

25 MR. HANCHET: This is Mark Hanchet. With

1 me is Robert Hamburg, both from Mayer Brown, on
2 behalf of Banque Libano-Francaise. There's no one
3 else.

4 THE COURT: Okay. Thank you.

5 And Jammal Trust Bank SAL and defendant,
6 Dr. Muhammad Baasiri, anybody here? Is that -- they
7 are somewhat differently situated.

8 Now, because we are here with regard to
9 the modification of protective order, I'm also
10 expecting counsel for Standard Chartered Bank, a
11 non-party.

12 Is anybody here on behalf of Standard
13 Chartered Bank?

14 MR. FINN: Good morning, Your Honor.
15 Andrew Finn from Sullivan & Cromwell LLP, on behalf
16 of Standard Chartered Bank.

17 THE COURT: Okay. And is anybody here on
18 behalf of KBC? I'm sorry.

19 MR. RUBIN: Yes, Your Honor. Yes,
20 Your Honor. This is Aaron Rubin from Orrick,
21 Herrington & Sutcliffe, and I'm here on behalf of
22 KBC Bank NV, New York branch. No one else here with
23 me.

24 THE COURT: And would you mind just
25 spelling your last name, sir, just so we can be sure

1 it's correct on the record.

2 MR. RUBIN: Of course. It's R-U-B-I-N.

3 THE COURT: That's what I guessed. And
4 is it Eric with a "C" or "K"?

5 MR. RUBIN: Aaron, actually. A-A-R-O-N.

6 THE COURT: All right. I just corrected
7 my own notes and switched it from Erin with an "E"
8 to Eric. So sorry about that.

9 MR. RUBIN: No problem.

10 THE COURT: All right. So anybody else
11 here on behalf of any non-parties? If so, please,
12 speak up.

13 All right. Is there anybody else who has
14 joined the call since we started to put appearances
15 on the record who would like to state their
16 appearance and whose behalf they are here?

17 Anybody at all?

18 MR. TURNER: Your Honor, this is Tab
19 Turner for the plaintiffs. I was on originally, got
20 kicked off, and got back on while you were talking.

21 THE COURT: Okay. And who are you here
22 for, sir?

23 MR. TURNER: Plaintiffs.

24 THE COURT: Oh, I'm sorry. Okay. I'm
25 putting you in the plaintiff camp. Okay. Moving

1 your name up.

2 Okay. So as the parties know, we're here
3 today pertaining to a disagreement about the use of
4 some discovery materials. I believe that this was
5 initiated back towards the end of July with an
6 opening letter motion. I have various filings in
7 response, including a July 28th letter from
8 Sullivan & Cromwell and a reply from the Osen firm
9 that was filed on August 1st, as well as -- I guess
10 it's a surreply filed by defendants on August 9th, a
11 document 341 in addition to the papers that were
12 filed in the Freeman docket itself.

13 So this is plaintiffs' motion seeking to
14 modify the protective order. So, Mr. Osen, would
15 you like to start?

16 MR. OSEN: Sure. Good morning, Your
17 Honor again. This is Gary Osen from Osen LLC, on
18 behalf of the Bartlett plaintiffs.

19 I'm happy to proceed in whatever way you
20 want. I can, obviously, provide a, sort of, full
21 argument in favor of our motion, or I can also just
22 answer any questions Your Honor may have; whatever
23 the Court thinks is most helpful.

24 THE COURT: You know, as I read the
25 papers, what jumps off the page is the fundamental

1 disagreement as to what you're asking the Court to
2 do and what the applicable standard is. So I think
3 that those are important places to start.

4 Firstly, what specifically are you
5 seeking to do? I have your proposed order, but, as
6 the non-parties point out, you haven't provided
7 specificity, which documents, which transactions?
8 Nothing specific on which to make any kind of
9 factual finding if I do need to make a finding of
10 compelling need, which you also take issue with.

11 So I really want to understand what
12 you're trying to do and what you think the standard
13 of proof -- guidance should be for the Court. What
14 standard am I to apply in evaluating your motion?

15 MR. OSEN: Okay. Well, it sounds,
16 Your Honor, like it's probably most efficient if I
17 start from the top and work through the questions
18 you -- that you posed specifically with respect to
19 the type of documents and so forth.

20 As Your Honor knows, we filed our motion
21 on July 21st and submitted a proposed order with our
22 motion. And we represent 12 -- approximately 1,200
23 plaintiffs here in the Bartlett case that are also
24 plaintiffs in the Freeman cases before Judge Chen.
25 Counsel for five of the nine defendants in Freeman

1 are also represented by Mayer Brown, who represents
2 defendants, Bank Audi and Banque Libano-Francaise in
3 the Bartlett case.

4 The Freeman and Bartlett cases parallel
5 one another in other ways as well. As you know,
6 Your Honor, the Bartlett case involves detailed
7 allegations that the defendant -- all Lebanese banks
8 knowingly provided substantial assistance to
9 Hezbollah and, to a lesser degree, its parent
10 organization, Iran's Islamic Revolutionary Guard
11 Corps. These are the two sister terrorist
12 organizations that allegedly injured or killed the
13 plaintiffs in this case.

14 In the Freeman case, which started five
15 years before the Bartlett case, it's basically a
16 mirror image of Bartlett in that it involves
17 allegations that the defendants -- all but one of
18 them European banks -- knowingly provided
19 substantial assistance to Iran's Islamic
20 Revolutionary Guard Corps, or IRGC, and then, to a
21 lesser degree, its vassal organization, Hezbollah,
22 again, with the same allegation that those two
23 sister terrorist organizations, you know, were
24 implicated in and authorized, planned, committed the
25 attacks that injured the plaintiffs.

1 THE COURT: So quick question.

2 MR. OSEN: Sure.

3 THE COURT: You mentioned that 50 or so
4 of the plaintiffs in the Freeman case -- you, you
5 know, made a quick reference to the idea that
6 there -- are all of those plaintiffs plaintiffs in
7 the Bartlett case?

8 MR. OSEN: There is some -- there are
9 plaintiffs in Bartlett who are not in Freeman and
10 some in Freeman who are not in Bartlett, but they
11 are substantially the same universe.

12 THE COURT: Okay. I mean, because that
13 was one of the issues that Sullivan & Cromwell
14 raised in their letter in terms of the lack of
15 over -- lack of complete overlap. The plaintiffs
16 are not the same.

17 Do you agree with that as a factual
18 matter?

19 MR. OSEN: Materially, no, I don't agree
20 with that.

21 THE COURT: Well, they either are the
22 same people or they aren't, Mr. Osen.

23 MR. OSEN: Well, Your Honor, there are --
24 there are over 1,200 plaintiffs.

25 THE COURT: I'm aware. I'm asking you

1 about Freeman.

2 MR. OSEN: Yes. Understood.

3 THE COURT: Are the plaintiffs in Freeman
4 100 percent included in Bartlett; yes or no?

5 MR. OSEN: No.

6 THE COURT: Thank you. Go ahead.

7 MR. OSEN: But I don't think -- sorry,
8 Your Honor, but I don't think that makes any
9 difference legally.

10 THE COURT: I disagree, but go ahead.

11 MR. OSEN: Okay. Okay, so without going
12 into the long procedural history of the Freeman
13 case, the short version is that Freeman 1 was
14 dismissed for failure to state a claim, went up on
15 appeal. And both -- I should say both Freeman 1 and
16 2 were dismissed.

17 But Freeman 1 went up on appeal to the
18 Second Circuit, and it was dismissed -- or its
19 conspiracy claims were dismissed, and the dismissal
20 was -- I'm sorry. The plaintiffs' conspiracy claims
21 which had been dismissed were affirmed and -- albeit
22 on other grounds.

23 In the meantime, Freeman 2 was stayed
24 while the appeal was pending. And after that was
25 decided, the Court waited until the Supreme Court

1 decided the case of *Twitter v. Taamneh* before
2 holding a status conference. So the status
3 conference was held, as Your Honor knows, on June
4 27th of this year, and it related to plaintiffs'
5 motion to amend primarily the -- primarily the
6 Freeman 2 case. Again, I'm oversimplifying a little
7 bit, but that that's where we stand.

8 So during that conference, the plaintiffs
9 explained that -- and this is a quote from that
10 conference -- that part of what we envision in
11 amending Freeman 2 would be to ask the district
12 court in Bartlett to allow us to incorporate certain
13 information we gathered from third-party subpoenas
14 in that case and to include them in some form, under
15 seal or redacted form, in the Freeman Consolidated
16 Amended Complaint. At that conference, Judge Chen
17 then granted plaintiffs' motion to amend with a
18 second amended complaint due on September 25th. And
19 that date has since been extended, I believe, to
20 October 17th.

21 So following the conference in late June,
22 plaintiffs met and confirmed with counsel for
23 KBC Bank and SCB -- that is Standard Chartered
24 Bank -- for their consent to use the records in
25 Freeman that they produced in the Bartlett case

1 under the terms that we just described, in terms of
2 being able to include transactional information in
3 redacted form on the public docket and under seal
4 otherwise in the Freeman case for the amended
5 complaint in that action. And KBC Bank indicated
6 that it didn't object. And, obviously, Standard
7 Chartered Bank indicated that they would oppose.
8 And then we filed our July 21st motion and proposed
9 order.

10 So I think Your Honor asked, sort of, two
11 questions. And the first one, let me address the
12 nature of the records or the information.

13 So, obviously, the main focus of Bartlett
14 subpoena records involves various entities
15 principally identified in the Bartlett complaint as
16 being controlled or affiliated with Hezbollah and
17 transactions that went through correspondent banks
18 in New York that would link those Hezbollah entities
19 or individuals to the defendants in this case.

20 And in response to the Bartlett
21 subpoenas --

22 THE COURT: Mr. Osen, just pause for one
23 moment.

24 MR. OSEN: Yes. Sure.

25 THE COURT: If somebody is not speaking,

1 please put your phone on mute. Thank you.

2 Go ahead.

3 MR. OSEN: Sure. So the third-party
4 banks produced principally spreadsheets of --
5 reflecting funds transactions through their U.S.
6 dollar clearing activities. And those spreadsheets
7 reflect originators, beneficiaries, correspondent
8 banks, dollar amounts, date of transfer, et cetera,
9 and are, therefore, sort of, the underlying summary
10 of the swift messages that executed those transfers
11 subject to the subpoena.

12 So what we're seeking to do, just to
13 answer Your Honor's first question, is to be able to
14 reference in -- you know, under seal and redacted on
15 the public docket, specific transactions involving
16 not specifically the Bartlett defendants, but the
17 Freeman defendants where they are either the bank
18 for the customer or beneficiary of a transaction
19 where we contend the customer involved is a
20 Hezbollah-controlled entity or Hezbollah operative.

21 And so, therefore, those data points
22 would be incorporated into the plaintiffs' amended
23 complaint in support of their claim that one or more
24 defendants provided substantial assistance to
25 Hezbollah as well as to the IRGC.

1 THE COURT: Mr. Osen, with all respect,
2 you've said very little that has not been included
3 in the papers. My question to you that was more
4 specific is -- you've included this, sort of,
5 high-level summary of the information that you seek
6 to include, and you describe it as the names of the
7 alleged Hezbollah-affiliated entities and
8 individuals in the transaction summaries, the names
9 of the Freeman defendants which held the relevant
10 accounts, the dollar amounts of the transactions
11 processed on behalf of the relevant
12 Hezbollah-affiliated customers between 2003 and
13 2011 -- which is, obviously, a fairly substantial
14 length of time -- and, where relevant, transaction
15 dates.

16 As I read this, I have no idea if you're
17 seeking to include three lines of data, five
18 transactions or thousands, and it matters in terms
19 of, kind of, what you are seeking to do and whether
20 you can show a compelling need.

21 MR. OSEN: Well, I can't -- I can't
22 quantify it at the moment, Your Honor, because we're
23 still in the process of going through the data, but
24 I can say -- I think it's reasonable to say it
25 implicates probably thousands of lines of data.

1 But, in practice, the way it's reflected in a
2 complaint allegation is that 1,000 transactions
3 might, nonetheless, be a one-sentence summary.

4 So, for example -- and part of the, sort
5 of, opacity, if you will, is just my reluctance to
6 give an example because, obviously, the records are,
7 you know, subject to the protective order, so -- and
8 we're in open court.

9 But to give an example, if you had --
10 let's take an example that's actually not in the
11 record. So let's assume, for the sake of argument,
12 that there were 500 transactions for the Martyrs
13 Foundation from a donor entity, the Martyrs
14 Foundation being a core Hezbollah institution.

15 Now, let's say there was a sponsoring
16 organization somewhere else in the world that sent
17 500 transactions to the Martyrs Foundation and was a
18 customer of a Freeman defendant. So the way that
19 would be reflected in the complaint is, you know,
20 customer X had an account with X defendant during
21 the relevant period from this date to that date,
22 that we know about, and transferred, let's say,
23 \$5 million in 20 -- in 500 transactions during that
24 period, full stop.

25 That would be the extent of the

1 disclosure, again, under seal and in redaction on
2 the open docket. And that would be mirrored for
3 multiple customers, depending, obviously, on the
4 particulars of each case.

5 THE COURT: Okay. And, you know, in your
6 papers, you seem to imply that I am to interpret the
7 provision of the protective order in the Bartlett
8 case differently than how the non-party, Standard
9 Chartered, thinks I should interpret that provision
10 and the interplay of the application to use
11 discovery elsewhere, you know, in connection with
12 other provisions within the protective order.

13 What do you think the standard is that
14 should be guiding my decision here?

15 MR. OSEN: Well, I think there are -- we
16 think that there are two different ways that you can
17 look at this.

18 So the first one, which I won't belabor,
19 is simply that the protective order has a provision
20 in C, you know, paragraph C of the protective order,
21 that expressly creates a mechanism for the
22 disclosure we seek. And you can simply -- you know,
23 under Section C, you can issue the order we've
24 requested.

25 The second alternative view, if you

1 accepted Standard Chartered or defendants' view
2 that, no, no, that provision is just procedural, it
3 doesn't have any, you know, force and effect itself,
4 then you would go to the, sort of, four-part test in
5 this circuit as to whether a party who produced
6 under a protective order "reasonably relied on it."

7 And there are four parts to that test.
8 There's scope, language of the protective order,
9 level of inquiry the Court undertook before granting
10 it, and the nature of the parties' reliance on it.
11 And I'm happy to go through all four, Your Honor,
12 and, sort of, just map out how that plays out in
13 this particular case.

14 THE COURT: Well, in this instance,
15 the -- you've argued that there's two ways to look
16 at it. And the first mechanism -- just looking at
17 paragraph C alone, do you actually believe that
18 anybody who entered into the protective order
19 thought that that provision did away with
20 preexisting circuit law on the topic of protective
21 orders?

22 MR. OSEN: Not at all, Your Honor.

23 THE COURT: Okay. So then how could I
24 look at it through that lens?

25 MR. OSEN: Because the protective order

1 is negotiated between the parties, unless the Court
2 holds a good-cause hearing. So the question -- of
3 course, by the terms of any protective order, the
4 parties can negotiate, you know, the mechanisms that
5 are -- will be used. And that's what paragraph C
6 is; it's a negotiated term.

7 THE COURT: Right. And I'm asking you
8 if, as a -- basically, a negotiated contract between
9 the various parties who negotiated it and those who
10 then later acted in reliance on it, do you think
11 that they were reading that provision as doing away
12 with *Martindell* and others binding Second Circuit
13 precedent?

14 MR. OSEN: Well, I don't think *Martindell*
15 has any relevance here whatsoever. But to be clear,
16 it's -- within the terms of a protective order, the
17 parties can negotiate whatever they want. And we
18 negotiated it. And the back and forth on the
19 protective order language makes clear that it
20 contemplated precisely what we were doing here.

21 So that -- that's certainly our view of
22 whether a protective order can take things outside
23 of the, sort of, traditional analysis under circuit
24 law. But even if you said, look -- even if
25 Your Honor says, look, I don't care about

1 paragraph C, as far as I'm concerned, that doesn't
2 matter to me. I want to look at it through the
3 broader prism of -- you know, assuming that
4 provision didn't even exist, it's still a four-part
5 test. And that four-part test is not just --
6 reliance is clearly not in play here. And, you
7 know, the case law we cited -- *Charter Oak Fire*. We
8 cited *In re EPDM* -- makes clear that this is not a
9 close call.

10 THE COURT: How do you argue that they
11 did not act in reliance on it?

12 MR. OSEN: Well, Your Honor, if you look
13 at the four -- maybe it's best if I just go through
14 the four --

15 THE COURT: I really would appreciate if
16 you would actually answer my questions when I ask
17 them.

18 MR. OSEN: Oh, absolutely, Your Honor.
19 What have I not answered?

20 THE COURT: I'm asking you how you are
21 taking the position that they did not act in
22 reliance on the protective order.

23 MR. OSEN: Sure. So it's a four-part
24 test in the Second Circuit to determine whether a
25 party has reasonably relied. The first part of the

1 test is scope. Narrow protective orders covering,
2 for example, specific deposition transcripts or
3 settlement agreements are entitled to greater
4 reliance, particularly if the evidence is generated
5 within the litigation itself.

6 But the PO in this case comprises what
7 the EPDM court calls "a blanket protective order
8 that grants sweeping protections to most, if not
9 all, discovery materials produced in the litigation;
10 even discovery materials that a party would have
11 been required to disclose in the absence of a
12 protective order."

13 So the Court says -- and this is a direct
14 quote -- "Although such blanket protective orders
15 may be useful in expediting the flow of pretrial
16 discovery materials, they are, by nature,
17 overinclusive and are, therefore, peculiarly subject
18 to later modification." That's an end quote from
19 EPDM at 255 F.R.D. at 319.

20 The second thing that the courts look at
21 is the language of the PO, and when "certain
22 non-parties are permitted to access confidential
23 information, and the parties contemplate the
24 confidentiality order may be modified with a court
25 order." These provisions do not completely undercut

1 the parties' reliance, but the language does reduce
2 the reasonableness of a party's reliance.

3 And that's a quote from *Pasiak v.*
4 *Onondaga*. That's a case of Westlaw. 2020 Westlaw
5 2781616 at 2.

6 In this case, the PO contemplates the
7 need to disclose to non-parties setting up specific
8 procedures for making such disclosures, including
9 experts and non-testifying consultants. And also, I
10 note in passing that it also contemplates the use of
11 records in open court at trial. So that's, again, a
12 factor against it.

13 We then go, Your Honor, to number three,
14 which is the level of inquiry the Court undertook
15 before granting a protective order. Those that are
16 granted by stipulation between the parties carry
17 less weight than protective orders granted after a
18 hearing to show good cause.

19 And finally, the nature of the parties'
20 reliance on it. The classic situation in which a
21 party "relies" on a protective order is where the
22 party creates material during the course of the
23 litigation on the understanding that it will be kept
24 confidential; for example, by signing settlement
25 documents or giving confidential testimony.

1 And we cited a case for that, *Allen v.*
2 *City of New York*; 420 F. Supp 2d 295.

3 Here, SCB was legally required to produce
4 the discovery material, even in the absence of a
5 protective order. And that's because the subpoena
6 sought relevant records in their possession.

7 So the short answer to all of this is
8 that Standard Chartered Bank can't satisfy even one
9 of the four factors for reasonable reliance as it's
10 defined in this circuit.

11 THE COURT: All right. Thank you.

12 Would Standard Chartered like to be
13 heard?

14 MR. FINN: Yes. Thank you, Your Honor.
15 Andrew Finn from Sullivan and Cromwell.

16 So, Your Honor, I think it's important --
17 and I just -- perhaps, if it makes sense for Your
18 Honor, I can respond to some of the points that
19 plaintiffs' counsel made, starting with the
20 difference between the Freeman cases and this case.

21 Standard Chartered Bank is a defendant in
22 the Freeman set of cases, is not a defendant in this
23 case. And plaintiffs' counsel said that these cases
24 were parallel of each other or mirror images, and I
25 think, you know, the record demonstrates the very

1 opposite.

2 What the timeline here is, is that
3 Standard Chartered was named as a defendant in the
4 Freeman cases. All claims against Standard
5 Chartered were dismissed by Judge Chen. Many of
6 those claims, including aiding and abetting claims
7 that were dismissed, were affirmed on appeal by the
8 Second Circuit. There's never been discovery
9 authorized in that case.

10 All those claims were dismissed as of
11 June 2020. And that's very important context for
12 the subpoena here because the subpoena in the
13 Bartlett case that was issued to Standard Chartered
14 by the Bartlett plaintiffs was issued -- I believe
15 it was dated December 2021 and was served in January
16 of 2022. So more than a year, almost two years
17 after all claims in the Freeman case were dismissed
18 against Standard Chartered Bank. No discovery had
19 ever been authorized. Standard Chartered Bank
20 received this subpoena.

21 And as we set forth in some of the
22 exhibits to our letter to Your Honor in response to
23 the motion, following receipt of that subpoena,
24 which asked for -- well, it's very sweeping --
25 called for all transaction records of hundreds of --

1 related to hundreds of entity names, asked for all
2 compliance records related to those names, as well
3 as the Bartlett defendants.

4 And as most third parties to lawsuits do
5 when they receive a subpoena, particularly a very
6 broad subpoena like this one, rather than engaging
7 in litigation and seeking to quash the subpoena
8 before the Court, you know, a third party tries to
9 engage in a negotiation to -- rather than fight
10 about the relevance or other aspects, negotiates the
11 terms of what they're going to produce, and that's
12 exactly what happened here.

13 Standard Chartered negotiated with the
14 plaintiffs' counsel. There was an agreement on a
15 subset of entities. They would run searches of
16 their transaction data for the correspondent banking
17 data. And there was a very express condition that
18 Standard Chartered set for doing that, and it's
19 reflected in the correspondence that was exchanged
20 between the parties, which we've included as
21 exhibits to our letter, and, in particular,
22 Exhibits 2, 3, 4 and 5 to our letter.

23 And what that reflects is that Standard
24 Chartered told plaintiffs' counsel, we will run
25 these searches. You know, as a third party to the

1 Bartlett case, we had no basis to, you know, really
2 thoroughly assess what the relevance was of any of
3 these names. There's a lot of them listed in the
4 subpoena if you look at Exhibit 1 to our letter.
5 But, you know, rather than fight with the
6 plaintiffs, agreed to do these searches on the
7 condition that they would be used only for this
8 case, the Bartlett case, and that they would be
9 confidential. And so there's back and forth.

10 At the time that Standard Chartered
11 received the subpoena, the protective order was not
12 in place, but we had been told that it was being
13 negotiated between the parties in the case. And so
14 Standard Chartered waited with plaintiffs' counsel
15 agreement to wait until the protective order would
16 issue. And upon the issuance of the protective
17 order, confirm with plaintiffs' counsel that the
18 protective order was in place.

19 Plaintiffs' counsel, even as reflected, I
20 believe, in Exhibit 2, informed the in-house staff
21 at Standard Chartered how to properly designate
22 these records as confidential under this protective
23 order. They said, you can just mark it
24 confidential. And in producing these documents,
25 Standard Chartered further reflected the -- a --

1 that key restriction in that agreement pursuant to
2 which documents were produced.

3 And, in particular, if you look at the
4 letter at Exhibit 3 of our submission, when
5 producing -- I believe it was the last set of
6 documents in November of 2022, Standard Chartered
7 specifically said that, "As a reminder, the
8 productions and any related communications from SCB
9 New York" -- that's Standard Chartered Bank, New
10 York, where these documents were produced from --
11 "are provided to you for use in the above-referenced
12 matter only."

13 So the first point of a factual reliance
14 on the protective order here, I don't think the
15 record could be clearer. As a result of this
16 agreed-to production, there were more than --
17 transaction records related to more than 50,000
18 transactions. And as plaintiffs' counsel said, each
19 one of these transactions has a series of data
20 associated with each one. There's a -- many banks
21 that are listed as being intermediary banks,
22 beneficiary banks, sending banks, receiving banks,
23 ultimate beneficiaries. There is a plethora of
24 information about tens of thousands of transactions
25 that occurred over a more than decade, and in some

1 instances, I think, closer to two-decade period from
2 a very large correspondent bank in New York.

3 And so these, these transactions, were
4 produced in good faith to -- you know, pursuant to
5 the protective order. And when we looked at the
6 protective order, Your Honor, in terms of the
7 question of the scope of it, the way we read it, I
8 think, is the only really natural reading, and a
9 reading that is consistent with how most protective
10 orders in this district and in the Second Circuit, I
11 think, in many cases is structured. And the
12 structure of it is really twofold.

13 First, there's -- in Section C of the
14 protective order, there's a provision that all
15 discovery material -- no matter if it's designated
16 confidential or not -- is supposed to be used solely
17 for this litigation for -- for the purpose of
18 conducting this litigation, which is defined to be
19 the Bartlett case.

20 There's obviously this next sentence that
21 follows it in Section C that says, "A party may move
22 before the Court in this litigation by letter motion
23 to request permission to use discovery material in
24 another case."

25 Again, there's no standard that was

1 defined there, other than the Second Circuit's
2 standard for modifying a protective order. And I
3 don't think plaintiffs' counsel today stated any
4 particular standard that would apply, other than the
5 normal, extraordinary-circumstance standard that is
6 reflected in, for example, *TheStreet.com*, Second
7 Circuit case, and the *Martindell* case.

8 But also importantly for the Standard
9 Chartered production, in addition to Section C,
10 Section D and E of this order specifically set out
11 how confidential information is going to be treated.
12 And there's no dispute here that we properly
13 designated these. These are financial records,
14 fundamentally, which is included in the list of
15 Section D, paragraph 2, under Section D of what
16 qualifies as confidential information: Financial
17 information, sensitive personal data, sensitive
18 personal financial information. Banking records
19 are, kind of, the typical types of things that, when
20 they include client names, bank counterparty names,
21 those are the kind of typical thing that is treated
22 as confidential in litigation.

23 Section D, and then Section E,
24 specifically lays out even more restrictive use than
25 just discovery material, generally, that's in

1 Section C. The use is restricted to the people
2 listed in Section E. And plaintiffs' counsel
3 mentioned that that includes some third parties,
4 but, you know, what wasn't mentioned is that what's
5 very express here is that those third parties who
6 are allowed to use the material are allowed to use
7 it only for this case. And that is a fundamental
8 restriction that is reflected throughout the
9 protective order.

10 If you look at paragraph 8 under Section
11 E, it goes on to talk about how protected
12 information shall not be copied, reproduced,
13 summarized, extracted or abstracted by the receiving
14 party, except to the extent doing so is reasonably
15 necessary for conducting this litigation.

16 Your Honor, if plaintiffs' counsel had
17 indicated to Standard Chartered Bank when they
18 issued this subpoena that maybe they would use some
19 of the tens of thousands of records that the bank
20 was producing for some other case, and to try to, in
21 particular, revive claims that had been dismissed
22 for years against Standard Chartered Bank -- I think
23 there would have been a different outcome in how
24 that -- those documents were produced because that
25 would have been on its face improper, we think,

1 under Rule 45 and, frankly, under Rule 26.

2 So in terms of reliance and the scope of
3 the protective order, we think it's fairly clear and
4 that this should be a fairly straightforward
5 determination. And in addition, I think what's
6 telling here is that while the plaintiffs' counsel
7 referenced to Judge Chen when seeking amendments of
8 the complaints back in July, that plaintiffs'
9 counsel would be seeking some information from this
10 case that was produced by third parties. There was
11 no request, and there never has been until, frankly,
12 like, a week or two ago, to engage in discovery in
13 the Freeman case.

14 What normally should happen and what,
15 frankly, distinguishes this case from any of the
16 other cases that plaintiffs cite where there is
17 sharing between cases of discovery materials,
18 discovery has never been authorized in the Freeman
19 cases. That's because the cases were dismissed for
20 failure to state a claim against Standard Chartered
21 Bank. And we also don't have identity of the
22 parties. We don't have the same plaintiffs.
23 There's certainly some overlap.

24 But another point of plaintiffs' request
25 is that they're seeking to not only -- the Bartlett

1 plaintiffs are not only seeking to use it in the
2 Freeman cases, but also share it with another set of
3 plaintiffs in this case that's referred to as the
4 "Stevens case," who have different plaintiffs'
5 counsel. It's a different set of plaintiffs
6 altogether.

7 And also, there's not identity of the
8 defendants. I don't think any of the defendants in
9 this case, in Bartlett, are defendants in the
10 Freeman set of cases, you know. And so, Your Honor,
11 I think under the standard set forth in
12 *TheStreet.com*, which, of course, references this
13 *Martindell* decision, which in no way -- the standard
14 is in no way limited to, you know, testimony that is
15 developed in a case.

16 Protective orders are entered, as
17 Your Honor knows, in many commercial cases all the
18 time in this district. And a case that we cited
19 which I think is particularly on point is the
20 *Arcesium v. Advent Software* case, which is a
21 Southern District case from March of 2022. And
22 it's, just for the record, 2022 Westlaw 621973.

23 And that was, you know, in some way, a
24 similar situation where the plaintiffs in that case
25 were engaged in discovery, had a protective order

1 that was largely similar to the one in this case.
2 And in that case, the plaintiffs found something in
3 discovery, and they wanted to assert a new claim
4 against the same defendants. A little bit different
5 from the case here because they want to actually use
6 the material to assert a claim against different
7 defendants.

8 But putting that distinction aside, the
9 plaintiffs wanted to use that material to assert a
10 different claim and bring another lawsuit against
11 the same -- or some of the same defendants. And the
12 protective order had a use restriction that said
13 you're only to use the material you get in case one
14 for case one, not for other cases. And the Court
15 found that it was not a compelling need for
16 plaintiffs to use material they found in case one to
17 assert new claims against defendants in another
18 case.

19 So, finally, Your Honor, I'll just touch
20 on the point that you raised about which documents
21 and which transactions.

22 We have been asking plaintiffs' counsel
23 that precise question since this issue was first
24 raised to us in July. And the best that we've
25 gotten so far is a list of -- from the over 50,000

1 transactions, a list of about 21,000 transactions.
2 And when we asked plaintiffs, could you, please,
3 tell us what it is specifically you want to use, you
4 know, if it is, in fact, you know, something very
5 limited, that would be a very different situation
6 than if it is information from 21,000 transactions
7 over an almost-decade period. And to date, we still
8 haven't gotten an answer. And the last answer we
9 got when we asked was that the plaintiffs probably
10 won't know exactly what they want to say until the
11 night that they have to file the amended complaint
12 in the Freeman cases.

13 So, unless Your Honor has any further
14 questions, I think the protective order clearly
15 prevents what plaintiffs are seeking to do. There's
16 really no prejudice to the plaintiffs here in
17 Freeman, you know, because they have the normal
18 Federal Rules of Civil Procedure that will apply in
19 the Freeman cases. They've been ongoing for years.
20 And that case should proceed pursuant to the
21 procedures that Judge Chen has set out for an
22 amended complaint. If the amended complaint
23 survives a motion to dismiss, which we don't think
24 it should, under prevailing Supreme Court law and
25 Second Circuit law -- if it does, for some reason,

1 there'll be discovery. But that is --

2 THE COURT: Just a couple follow-ups for
3 you. I'm sorry. Do you want to finish out that
4 thought? We started speaking at the same time.

5 MR. FINN: No, Your Honor. I was
6 finished. I'm happy to answer any questions.

7 THE COURT: All right. So you've, you
8 know, suggested that there's no prejudice to the
9 plaintiffs in the Freeman action by not being
10 permitted to use these documents at this time. And,
11 of course, one of the considerations that courts
12 have looked to in analyzing these questions is
13 really just baseline efficiency, Rule 1, basic
14 principles of court administration, ease of use for
15 the parties.

16 You know, it is -- if they were to seek,
17 you know, authorization to get the -- you know, some
18 basic, you know, document requests going and things
19 like that, and it were granted, wouldn't it be more
20 efficient to just give -- let them cross apply the
21 discovery?

22 MR. FINN: Well, Your Honor, if that were
23 a scenario that was in place, perhaps, but that is
24 not the scenario here. We have dismissed claims
25 right now that have been dismissed for years in

1 Freeman. There's been no discovery authorized. Had
2 the plaintiffs -- you know, they did, but we
3 actually didn't respond to the request before Judge
4 Chen denied it.

5 But, you know, we think, under different
6 Second Circuit law, that when you have a dismissed
7 claim and a plaintiff is seeking to amend their
8 complaint, that it is improper to permit a plaintiff
9 to engage in discovery in order to try to sift
10 through in this case tens of thousands of
11 transactions, to try to come up with a claim.

12 You know, that is not how Rule 12 is
13 supposed to work in terms of pleading a claim. The
14 plaintiff is supposed to plead a claim based on
15 information that they have and they have, you know,
16 appropriate access to. So, really, we think this is
17 an end run around the normal procedures. And if you
18 look at the cases that the plaintiff has cited, you
19 know, we're -- that is more of the ilk of, you know,
20 two related cases proceeding in discovery. And, you
21 know, there's some efficiency to be gained then in
22 that sort of scenario, particularly if there's no
23 relevance objections.

24 But again, here, you know, we haven't
25 seen also, if that scenario were to occur, which it

1 hasn't, authorization of discovery in Freeman, we
2 still haven't been provided, which I think would
3 have to be provided to some court at some point,
4 either Your Honor or Judge Chen, what specifically
5 it is that would allow extraordinary discovery
6 before -- in order to amend a complaint, which is
7 something that courts routinely do not permit.

8 THE COURT: And, you know, as you point
9 out, Rule 12 requires the District Court to take the
10 allegations as alleged in the complaint at face
11 value and assume them to be true.

12 One of the tricky things in these cases
13 involving voluminous bank records is, of course,
14 getting the information. You said, of course, any
15 information that they actually utilize in the
16 complaint would need to have been obtained lawfully.
17 And that is, of course, right. But the bank is
18 like -- the banks -- in cases where you're suing a
19 bank, the sole repository of a lot of the key
20 information, how is a plaintiff supposed to plead
21 their, you know, amended complaint just on
22 information and belief they have conducted
23 transactions with, you know, entities that are on
24 the designated watch list; whatever they want to
25 say. How would that work from your point of view?

1 Obviously, I'm familiar with the
2 complaint in Bartlett and Freeman and many of the
3 other cases, having written extensively in a prior
4 discovery dispute in this case. But in all candor,
5 you know, how are they supposed to plead with
6 sufficient specificity to survive *Iqbal* without
7 actual information?

8 MR. FINN: Well, Your Honor, I think that
9 that's obviously a situation that happens in many
10 cases. And Rule 12 requires that the plaintiff have
11 some information. And you generally don't get
12 pre-complaint discovery in order to find information
13 and sift through confidential banking records of a
14 bank.

15 I think, actually, with the -- more
16 fundamentally, for these Antiterrorism Act cases,
17 the fundamental -- it really reflects the
18 fundamental flaw in the claims. And I don't really
19 mean to go into too much of the merits here, but,
20 you know, the problem of all of these claims is that
21 there's no connection that has ever been alleged,
22 nor, to our knowledge, from any of these 50,000-plus
23 transactions that were produced in this case, that
24 reflect whatsoever any connection between Standard
25 Chartered Bank and any terrorist attack.

1 And so these claims are all -- always
2 have been premised on very attenuated links that
3 talk about, you know, correspondent banking
4 relationships and have primarily been pled based on
5 public information that has come out through
6 settlements that have resulted, particularly in the
7 Freeman cases, in terms of, you know, sanctions,
8 compliance with several banks with respect to Iran.

9 And so, you know, there is some public
10 information out there, but, you know, fundamentally,
11 that's an issue that every plaintiff must always
12 face, is that you don't -- under the Federal Rules,
13 you don't get pre-complaint discovery to try to
14 plead a claim. And particularly, you don't get
15 discovery after the Court has already, in Freeman,
16 ruled as to Standard Chartered Bank that no
17 plausible claim has been pled. I mean, that's what
18 the Court ruled in Freeman -- in the Freeman cases
19 back in 2020.

20 So, you know, that's an issue that, of
21 course, faces everyone. It faces both sides,
22 frankly, in litigation. You don't get pre-complaint
23 discovery.

24 THE COURT: All right. And just one
25 more, sort of, hypothetical question on background.

1 Had there been no protective order in
2 this case, what steps would you have taken regard to
3 responding to the subpoena?

4 MR. FINN: Your Honor, we would have --
5 number one, we would have thought much more about,
6 you know, particular -- and required plaintiffs to
7 show us why each one of these names on the list was
8 somehow relevant to the Bartlett case. That would
9 be the first.

10 And the second would be we would have
11 sought a protective order. It was made very clear
12 to the plaintiffs, as I said, that Standard
13 Chartered was not going to produce anything in the
14 absence of a protective order. And, you know, in
15 some cases where there isn't a standby protective
16 order, that in this case it did on its face protect
17 any producing party, including third parties -- had
18 that not been in place, had that not been agreed to
19 and so ordered by the Court, we would have sought
20 that protection either through an agreement with the
21 plaintiffs, or if that agreement was not agreed to,
22 sought relief from the Court.

23 THE COURT: All right. Thank you very
24 much, Mr. Finn. Is there anything else you'd like
25 to add before I turn to your defendant counterparts?

1 I don't know who's taking the lead on
2 behalf of the remaining banks, but I, of course,
3 want to hear from them if they would like to be
4 heard.

5 Anything final, Mr. Finn, for now?

6 MR. FINN: Nothing else. Thank you.

7 THE COURT: Okay. Thank you.

8 So who's taking the lead today? I have
9 many names on the filings filed on behalf of the
10 defendants. I don't know if you guys had organized
11 whether Mr. Streeter is the first name, whether --
12 who is going to start today on behalf of the
13 defendants?

14 MR. MCGINLEY: Yeah. Hi, Your Honor.
15 This is Mike McGinley from Dechert. I'll speak on
16 behalf of the defendants.

17 THE COURT: Okay.

18 MR. MCGINLEY: And I'll keep --

19 THE COURT: Yes. Linda Goldstein used to
20 be the lead for -- on a lot of these calls, so
21 it's -- the -- I encourage Dechert to continue if
22 that's your decision. Go ahead.

23 MR. MCGINLEY: Well, I appreciate that,
24 Your Honor, and we certainly miss Linda dearly here,
25 and I think the rest of the defense team does as

1 well. And I'll keep things brief because obviously
2 a lot has already been discussed.

3 The moving defendants have two related
4 concerns with this request. The first one is that
5 the plaintiffs just simply misrepresent the nature
6 of Subsection C in the protective order and the
7 governing standard for modifying it. And then,
8 second and relatedly, this request threatens to
9 undermine the letters rogatory process that's
10 undergo -- that's ongoing right now by signaling to
11 Lebanese authorities that plaintiffs will seek to
12 use discovery in other proceedings, despite the
13 protective order's clear statement that documents
14 produced here will only be used in this litigation.

15 As to the first point, I would just
16 direct Your Honor to our August 9th letter and the
17 attached e-mail correspondence, which reflects the
18 drafting history here. As that e-mail
19 correspondence demonstrates, the defendants
20 initially objected to the language in Subsection C
21 that the plaintiffs now seek to rely on, precisely
22 because we were worried that they would take this
23 position.

24 In response, plaintiffs expressly stated
25 that the language simply provides a procedure for

1 them to move to "modify the PO." And obviously,
2 then, that language stayed in. And so, having
3 secured agreement on the basis of that
4 representation, we think it's just simply
5 disingenuous for them to argue otherwise now.

6 And that's -- it's important to us not
7 only because we don't know what is even in this
8 category of documents that they seek to use, so we
9 don't know if it has to do with the defendants here,
10 but the critical point is it's important to the
11 defendants that the proper standard is applied under
12 the protective order going forward so that there's
13 no confusion.

14 And as I noted, that's particularly
15 concerning because of the ongoing letters rogatory
16 process, you know, we think it's important to
17 enforce the protective order's restrictions and the
18 Second Circuit's limits so that Lebanese authorities
19 aren't given the misimpression that they -- that
20 they're not able to rely on the express language of
21 the protective order when evaluating what to do
22 about bank secrecy.

23 THE COURT: All right. Thank you.

24 Would anybody else like to be heard on
25 behalf of the moving defendants? If so, please

1 state your name and who you represent.

2 All right. Thank you very much,
3 Mr. McGinley.

4 Now, going back to you, Mr. Osen. Is
5 there anything you'd like to say in response to Mr.
6 Finn or Mr. McGinley?

7 MR. OSEN: Just very briefly, Your Honor.

8 So, you know, obviously, Mr. Finn
9 articulated what is essentially the standard back
10 and forth we have with every third party about
11 third-party discovery of banks, and there's nothing
12 unusual in that.

13 I would just point out, again, that we
14 cited to *Charter Oak Fire* and *In re EPDM*. Those two
15 cases are, we think, not controlling on Your Honor,
16 obviously. They're district court cases, but they
17 set forth a standard, and there's been no reputation
18 of what that standard is or its applicability to the
19 case here.

20 I'd just add that, in *EPDM*, the party
21 seeking the records wasn't the same party. It was
22 an intervener who wanted to use the records in a
23 Canadian proceeding. So even under the most
24 extenuated circumstances, where you have someone
25 who's unrelated to the original litigation, the *EPDM*

1 Court found that it was appropriate and efficient to
2 grant the relief sought.

3 Lastly, just with respect to the point
4 made a moment ago about the Lebanese Bank secrecy
5 issue, I'll just point out, Your Honor, that Section
6 C -- this is, again, negotiated by the parties --
7 specifically has a provision added by the defendant
8 for instances where someone files a request for
9 permission to use discovery material in another case
10 or matter. The designating party who obtained the
11 customer waiver shall promptly notify the customer
12 of the motion, which customer will have a reasonable
13 opportunity to object to said motion, as will the
14 designating party.

15 So that PO already puts any Lebanese
16 party, including customers who grant waivers, notice
17 that there may be a mechanism by which the materials
18 could be used in another case. So as far as we're
19 concerned, you know, that's already squarely in the
20 protective order, in its language. And that's all I
21 have to add.

22 THE COURT: So what about the issue of
23 prejudice that Mr. Finn alluded to with regard to
24 your ability to amend your complaint, regardless of
25 your access to these materials? As you know, under

1 Rule 12, you have to provide on -- you know, upon
2 information and belief, good-faith allegations as to
3 why there is a valid theory of the case with the
4 understanding that you wouldn't be ordinarily in a
5 position to provide specific transaction records and
6 things along those lines because discovery hasn't
7 commenced.

8 Why is that not appropriate here? Why do
9 you need the actual evidence? And how is this an
10 extraordinary circumstance?

11 MR. OSEN: Sure.

12 THE COURT: I mean, that's really, I
13 think, the million-dollar question that hasn't been
14 answered by plaintiff, the -- what your compelling
15 need is, or extraordinary circumstance, given that
16 you can modify on information and belief.

17 MR. OSEN: Sure. The case law in this
18 circuit, and, frankly, in JASTA -- that's Justice
19 Against Sponsors of Terrorism Act -- cases
20 generally, is that information-and-belief
21 allegations are routinely rejected as insufficient.
22 And specificity -- I know we're nominally under a
23 Rule 8 standard, but the reality is that court after
24 court applies something more heightened than a
25 Rule 9 standard to JASTA claims.

1 So the practical reality of this is that
2 these, these complaints should be decided on the
3 merits; that is, with the Court having the benefit
4 of the information that is available. And remember
5 here, Your Honor, this entire exercise, which
6 presents no burden to any defendant in the Bartlett
7 case, no burden to any defendant in the Freeman
8 case -- the plaintiffs have the records. The
9 plaintiffs have the information.

10 So the only question is whether the
11 Freeman plaintiffs will be able to properly plead on
12 a redacted open docket and under seal in the Freeman
13 case, the full extent of what they know about the
14 Freeman defendant's actionable conduct, and for the
15 Freeman court to have the benefit of a full record
16 as far as is possible without imposing any burden on
17 any party or third party to decide that motion on
18 the merits.

19 THE COURT: Have you ever made -- have
20 you made any sort of application to Judge Chen to
21 initiate discovery, or Judge Pollak?

22 MR. OSEN: So, in answer to that
23 question, Your Honor, discovery was stayed in
24 Freeman 1 by Judge Pollak. It was never sought in
25 Freeman 2 because of the procedural posture of

1 Freeman 1. And the entire case of Freeman 2, after
2 its dismissal, but because of the Freeman 1 appeal,
3 was stayed until the conference in June of this
4 year.

5 And so I know Mr. Finn keeps saying
6 "dismissed claims," but the reality is that
7 Judge Chen granted plaintiffs' leave to amend. And,
8 frankly, the Stevens plaintiffs have -- had never
9 amended, so they have an amendment as of right in
10 that case.

11 So there's a live case. It's just an
12 amended complaint, notwithstanding the prior
13 history. And we think it's both under the case law
14 we cited and practical efficiency, as Your Honor
15 alluded to, and just common sense that materials
16 that are already in the plaintiffs' possession --
17 that is, the Freeman/Bartlett plaintiff habit --
18 albeit, again, it's a fictional Chinese wall between
19 the two, right, the same counsel represent both sets
20 of plaintiffs.

21 So we know what we know, but essentially
22 what Standard Chartered is asking is that we keep
23 what we know from the Freeman court so that the
24 allegations will not be fully and, you know,
25 carefully pled in their totality. And we don't

1 think that's either efficient or appropriate. The
2 case should be decided on its merits. There's no
3 prejudice.

4 I mean, the prejudice to SCB, obviously,
5 is that, to the extent the materials they produced
6 incriminate them in some way, that's bad for them,
7 but it's not a prejudice recognized in this context,
8 which is a different question entirely. There's
9 simply no burden here. It's entirely, you know, a
10 legal fiction because we already know. We already
11 have the material. So we're simply seeking to give
12 the Court the specificity to make clear that the
13 allegations we set forth are plausible.

14 THE COURT: Have you made an application
15 to Judge Pollak or Judge Chen to seek discovery on
16 the basis of your circumstances that you say are
17 compelling or extraordinary in that case?

18 MR. OSEN: Yes. So, Your Honor, we filed
19 a motion that was --

20 THE COURT: Well, you know what's filed
21 related to this protective order --

22 MR. OSEN: Right.

23 THE COURT: -- but I don't think Judge
24 Chen or Judge Pollak would be inclined to modify a
25 protective order issued by another judge.

1 My question is really simple. Have you
2 filed an application to Judge Chen or Judge Pollak
3 to commence discovery or issue some subpoenas?

4 MR. OSEN: We have -- we only filed a
5 motion with Judge Chen to allow for constructive
6 discovery in the Freeman 2 case, which Judge Chen
7 denied because of the hearing today.

8 THE COURT: Right. All right.

9 So a couple -- one more question for
10 everybody. And I'll also give the defendants and
11 the non-party, Standard Chartered Bank, an
12 opportunity to respond to anything final.

13 This motion was originally initiated as a
14 letter motion for a pre-motion conference, and it is
15 not -- was not filed as, like, a full motion, but it
16 has been more than briefed as a full motion.

17 So is there any objection, Mr. Osen, to
18 converting the pre-motion conference letter to the
19 motion and incorporating all the subsequent filings
20 as part of the papers?

21 MR. OSEN: No objection, Your Honor.

22 THE COURT: All right.

23 Mr. Finn, any objection to converting
24 your responses to these pre-motion conference
25 letters as you're briefed?

1 MR. FINN: No, Your Honor.

2 THE COURT: On behalf of the moving
3 defendants, Mr. McGinley, any objection?

4 MR. MCGINLEY: No, Your Honor, unless one
5 of my colleagues pipes up, which I do not expect
6 them to.

7 THE COURT: Okay. Anybody who is on the
8 line, does anybody object to converting the
9 pre-motion conference paperwork to the motion
10 itself?

11 Okay. Is there anything you'd like to
12 say in brief response to Mr. Osen, starting with
13 you, Mr. Finn?

14 MR. FINN: Just briefly, Your Honor,
15 because it was raised by Mr. Osen. The two cases
16 that he's relying upon, which I think were
17 referenced in his reply letter, this *EPDM* case and
18 this *Charter Oak* case -- you know, those cases if
19 you look at them are quite distinguishable from this
20 scenario. *EPDM*, the court referred to the
21 protective order there as a blanket order.

22 And as I described previously, the
23 protective order here, while it has a blanket
24 provision that covers all discovery material, it
25 also has a very particularized protection for

1 confidentially designated material, and it's
2 specific categories, it includes financial
3 information. So really, that, sort of, blanket
4 order type case law really shouldn't apply in this
5 case.

6 And then on the *Charter Oak* case, you
7 know, we all -- that is more of the scenario that
8 Your Honor's hypothetical went to, where you have
9 two cases where in the one case there's no doubt
10 that -- first of all, it's the same defendant, and
11 there's no -- which it isn't here. And there's no
12 question that in the parallel case, there's
13 discovery ongoing, and it's just a more efficient
14 path, which is, you know, very different from the
15 scenario here.

16 You know, and, finally, the suggestion
17 that, you know, somehow these 50,000 records
18 incriminate Standard Chartered Bank, we're still
19 waiting for the plaintiffs to explain that to us.
20 They haven't. And so, you know, the suggestion of
21 that is, you know, I think, inappropriate until they
22 could actually, you know, show us what they think
23 has anything to do with the Freeman case, and we're
24 still waiting for that.

25 THE COURT: Mr. McGinley, anything final?

1 MR. MCGINLEY: The only thing very
2 briefly, Your Honor, is Mr. Osen pointed to that
3 last sentence in paragraph C, which, I think, just
4 further highlights that the second sentence is
5 purely procedural. Neither of those sentences say
6 anything about the substantive standard, which is
7 the *Martindell* standard, and nothing that Mr. Osen
8 said in any way disputed the parties' drafting
9 history. Thank you.

10 THE COURT: Okay.

11 All right. So I want to thank you all
12 for your careful presentation today and your
13 thorough briefing. I am prepared to rule, and I
14 conclude that, in accordance with the Second
15 Circuit's observation in *S.E.C. v. TheStreet.com*,
16 273 F.3d 222 at 230, it is presumptively unfair for
17 courts to modify protective orders which assure
18 confidentiality and upon which the parties have
19 reasonably relied.

20 I've evaluated the four-part test
21 plaintiff has suggested that I review, but at the
22 end of the day, the Second Circuit's teachings in
23 *TheStreets* and in the *Martindell* case give the Court
24 substantial concern that upending the parties
25 agreed-upon protective order in this case, which did

1 help to facilitate the discovery production, would
2 be fundamentally unfair to the parties who acted in
3 reliance on it.

4 I do find that there was substantial
5 reliance on the protective order that was put into
6 place in this case. As the parties have
7 demonstrated through the exhibits filed in
8 connection with their motions, the language at issue
9 was carefully negotiated. The parties went back and
10 forth on it. And I'm looking to the exhibits to
11 Standard Chartered Bank response filed at ECF 339.
12 They have e-mail correspondence and other
13 documentation illustrating the importance of the
14 protective order being in place prior to producing
15 the records and their reliance not only on the
16 protective order, but on the confidentiality
17 designation specifically as needing to be present in
18 the case prior to their willingness to comply with
19 the subpoena.

20 By permitting the parties to engage in
21 the protective-order process on their own and not
22 burdening the Court, I do not find that the Court's
23 lack of involvement in any way undercuts the
24 strength of this protective order. To the contrary,
25 one of the stated purposes the Second Circuit has

1 repeatedly looked to in relying on affirming or
2 upholding parties reliance on protective orders is
3 the idea the protective orders facilitate discovery
4 and efficiency. And although plaintiffs contend
5 that it would be efficient to transfer the discovery
6 in this case over to the other cases, those
7 efficiencies are different than the efficiencies
8 that the Second Circuit recognizes in the
9 protective-order context.

10 By promoting efficiency and permitting
11 the parties to engage in discovery in the way that
12 they have conducted here is important. It's an
13 important principle that needs to be encouraged and
14 protected, or else all sensitive subpoenas would
15 come back to the Court for litigation, protective
16 orders, and that simply would bring the discovery
17 process to a grinding halt. So I don't find that
18 the lack of inquiry or lack of involvement in
19 putting a protective order in this case has any
20 weight whatsoever in my determination to enforce the
21 protective order in this case.

22 With regard to the language of the order,
23 as has been discussed at length, the protective
24 order in this case is very clear. It states that --
25 in paragraph C that all discovery materials, or any

1 copies, summaries or abstracts thereof shall be used
2 solely for the purpose of conducting this
3 litigation, including for purposes of mediating or
4 otherwise attempting to settle this litigation;
5 however, a party may move before the Court in this
6 litigation by letter motion to request permission to
7 use discovery material in another case or matter.

8 So the language as to what material is
9 covered is clear. There's a mechanism in place to
10 come to the Court. And I interpret that language to
11 be against the backdrop of preexisting Second
12 Circuit case law at the time that this was drafted.

13 In addition, as the parties have noted,
14 there's a confidentiality designation within
15 paragraph Subsection D of the agreement that
16 specifically provides for additional protections
17 for -- that material that is designated as
18 confidential information, which is how the
19 information is designated here that has been
20 produced by Standard Chartered Bank.

21 Inherent in bank records is the inclusion
22 of sensitive personal data, personal identifiers,
23 all kinds of financial information. There may be,
24 you know, various sensitive personal data of the
25 type that was specifically designated to be provided

1 special confidential protection under the protective
2 order.

3 So, having reviewed the back and forth
4 between the parties in determining what the language
5 of the protective order should be, I do find that
6 there was substantial reliance by Standard Chartered
7 Bank in the determination to produce these records.
8 And I credit Mr. Finn's representation that, if they
9 were in the position where there was no protective
10 order in place in this case, they would have sought
11 a protective order prior to complying with the
12 subpoena because of the nature of the information
13 sought.

14 So at this juncture, in the absence of
15 any sort of blessing by Judge Pollak or Judge Chen
16 to commence discovery in the other matters, I am
17 denying plaintiffs' motion to modify the protective
18 order without prejudice.

19 If you are -- discovery is commencing,
20 and the discovery may be cross-applied. You can
21 come back, but there would need to be a change of
22 factual circumstance and the legal circumstances
23 that could flow from that change of factual
24 circumstance to come back, but I do deny the motion.

25 Is there anything else I should do today,

1 Mr. Osen, starting with you?

2 MR. OSEN: Yes, Your Honor. Just one
3 question for housekeeping purposes since we have the
4 opportunity to be before you.

5 We have a motion pending for informal
6 conference on our first set of interrogatories that
7 was filed in -- March 3rd, and I was wondering if it
8 would be possible to schedule that conference.

9 THE COURT: When was that filing made?
10 I -- it's not popping up as a motion on the docket.

11 MR. OSEN: It was first filed at ECF 318
12 on March 3rd.

13 THE COURT: Oh, it was filed as a letter,
14 so I think it didn't flag our attention to the same
15 degree it would have if it was a motion.

16 So you're seeking to have it -- so my
17 understanding is that this is -- this is the
18 interrogatories?

19 MR. OSEN: Yes.

20 THE COURT: Okay. And you're looking to
21 schedule another conference?

22 MR. OSEN: Well, under your rules, as I
23 understand it, the parties had to file a joint
24 letter initially for request of informal conference.

25 THE COURT: Okay. I'm going to have to

1 refresh on this matter to determine whether or not
2 we need a conference. Unfortunately, because it
3 wasn't filed as a motion, I think it, kind of, slid
4 by under the radar screen. I do remember the issue,
5 but at the time that this came through, I think we
6 were actively working on the other opinion and
7 engaged in a lot of motion practice in other cases,
8 so I think that the need for a conference might have
9 slipped by us. So my apologies for that.

10 Mr. McGinley, do you believe this is --
11 we need a conference on this, or do you think this
12 is adequately addressed in the papers?

13 MR. MCGINLEY: Your Honor, as we present
14 in the papers, we don't think a conference is
15 necessary. We think that the papers show why it
16 would be inappropriate and premature to proceed with
17 interrogatories at this stage. Of course, if Your
18 Honor wished to have a conference, we would
19 participate, obviously.

20 THE COURT: Okay. Let me take a look at
21 the papers, and we will make a determination as to
22 whether or not we need a conference.

23 But thank you for flagging it, Mr. Osen.
24 I appreciate it.

25 Is there anything else besides that that

1 I should do today, Mr. Osen?

2 MR. OSEN: Not on our end, Your Honor.

3 THE COURT: Okay. Thank you.

4 Mr. McGinley, on behalf of the moving
5 defendants?

6 MR. MCGINLEY: Nothing else, Your Honor.
7 Thank you.

8 THE COURT: Mr. Finn, anything on behalf
9 of Standard Chartered?

10 MR. FINN: Nothing else. Thank you,
11 Your Honor.

12 THE COURT: All right. Thank you, all.
13 Have a great day. Take care.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Bartlett, et al., v. Société Générale de Banque au Liban SAL Docket #20-CR-00144 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: September 28, 2023